

CHAPTER NO. 102

HOUSE BILL NO. 1

By Representative McMillan and Mr. Speaker Naifeh and Representatives Maddox, Briley, Ulysses Jones, Hargrove, Litz, Yokley, Sontany, Coleman, Cobb, Fitzhugh, Stanley, Sherry Jones, Langster, Harmon, Fowlkes, Armstrong, McDonald, Pruitt, Kernell, Kelsey, Casada, Hackworth, Cooper, Rowland, Bunch, John DeBerry, Tindell, Favors, Shaw, Lois DeBerry, Davis, Hill, Baird, Todd, Harry Brooks, Pleasant, Hawk, Harrison, Matheny, Fraley, Dunn, Rinks, Henri Brooks, Winningham, Harwell, Hood, Borchert, Strader, Montgomery, Crider, Brown, Tidwell, Eldridge, Vaughn, Gresham, Sargent, Pinion, Swafford, Hensley, McDaniel, Hargett, West, Bone, Mike Turner, Curtiss, Davidson, Shepard, Marrero, Campfield, Curtis Johnson, McCormick, Phillip Johnson, Maggart, Miller, Moore, Ferguson, DuBois, Watson, McCord, Clem

Substituted for: Senate Bill No. 1841

By Senators Herron, Burks, Kyle, McLeary, Haynes, Jackson, Kilby, Kurita, Cohen, Williams, Hagood and Mr. Speaker Wilder and Senators Ramsey, Miller

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 10 and Title 3, Chapter 12, relative to the disclosure of fees or compensation for certain consulting services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 10, Part 1, is amended by adding the following new sections:

Section 2-10-122.

As used in this act, unless the context otherwise requires:

(1) The term "consulting services" with respect to an official in the legislative branch or an official in the executive branch means services to advise or assist a person or entity in influencing state legislative or administrative action as such term is defined in §3-6-102(11), including, but not limited to, services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the state. The term "consulting services" does not mean the practice or business of law in connection with representation of clients by a licensed attorney in a contested case action, administrative proceeding or rule making procedure.

(2) The term "consulting services" with respect to an elected municipal or county official, including members-elect of a municipal or county legislative body, means services to advise or assist a person or entity in influencing municipal or county legislative or administrative action as such term is defined in §3-6-102(11), including, but not limited to, services to advise or assist such person or entity in maintaining, applying for, soliciting or entering into a contract with the municipality or county represented by such official. The term "consulting services" does not mean the practice or business of law in connection with representation of clients by a licensed attorney in a contested case action, administrative proceeding or rule making procedure.

(3) The term "official in the executive branch" means the governor, any member of the governor's staff or any person in the executive service as such term is defined in §8-30-208(b); provided however, that such term shall not include members of boards and commissions who receive only expenses or a nominal per diem not to exceed six hundred dollars (\$600.00) per month, unless they provide consulting services for compensation with respect to the activities of the board or commission of which they are a member.

(4) The term "official in the legislative branch" has the same meaning as such term is defined in § 3-6-102(17).

(5) The terms "fee, commission, or any other form of compensation" and "compensation" do not include any thing of value which may be accepted under §2-10-116 or which is identified in §3-6-114(b) or (c).

Section 2-10-123.

(a) It is an offense for any member of the general assembly, member-elect of the general assembly, governor, member of the governor's staff, secretary of state, treasurer, or comptroller of the treasury to knowingly receive a fee, commission or any other form of compensation for consulting services from any person or entity, other than compensation paid by the state, a county or municipality.

(b) It is an offense for any person or other entity, other than the state, a county or a municipality, to pay a fee, commission or any other form of compensation for consulting services to a person such person or entity knows to be a member of the general assembly, member-elect of the general assembly, governor, member of the governor's staff, secretary of state, treasurer, or comptroller of the treasury.

(c)

(1)

(A) If conduct giving rise to a violation of the provisions of this section would also constitute the offense of bribery prohibited by the provisions of §39-16-102, then such violation is a Class C felony. Any person convicted of such offense shall forever afterwards be disqualified from holding any office under the laws or Constitution of this state.

(B) Nothing contained within the provisions of this section shall be construed to prohibit prosecution and conviction for the Class C felony offense of bribery of a public servant, set forth in § 39-16-102; nor shall it be construed to prohibit prosecution and conviction for any other applicable criminal offense.

(2) Any other violation of the provisions of this section is a Class A misdemeanor. Any person convicted of such offense shall forever afterwards be disqualified from holding any office under the laws or Constitution of this state.

Section 2-10-124.

(a) It is an offense for any member of a municipal or county legislative body, member-elect of a municipal or county legislative body, or other elected county or municipal official to knowingly receive a fee, commission or any other form of compensation for consulting services, other than compensation paid by the state, a county, or municipality.

(b) It is an offense for any person or other entity, other than the state, a county, or a municipality, to pay a fee, commission or any other form of compensation for consulting services relating to a municipality or county if such person or entity knows the person to whom the compensation is paid is a member of the municipal or county legislative body, a member-elect of the municipal or county legislative body, or other elected municipal or county official in the county or municipality in which the consulting services are to be performed.

(c)

(1)

(A) If conduct giving rise to a violation of the provisions of this section would also constitute the offense of bribery prohibited by the provisions of §39-16-102, then such violation is a Class C felony. Any person convicted of such offense shall forever afterwards be disqualified from holding any office under the laws or Constitution of this state.

(B) Nothing contained within the provisions of this section shall be construed to prohibit prosecution and conviction for the Class C felony offense of bribery of a public servant, set forth in § 39-16-102; nor shall it be construed to prohibit prosecution and conviction for any other applicable criminal offense.

(2) Any other violation of the provisions of this section is a Class A misdemeanor. Any person convicted of such offense shall forever afterwards be disqualified from holding any office under the laws or Constitution of this state.

Section 2-10-125.

(a) If any person or other entity, other than the state, a county or municipality, contracts to pay a fee, commission or any other form of compensation for consulting services to any:

(1) Staff person or employee of the general assembly;

(2) Member of a commission established by and responsible to the general assembly or either house thereof;

(3) Member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee regulatory authority; or

- (4) Member or employee of any executive department or agency or other state body in the executive branch;

then such person or entity shall disclose the following to the registry of election finance:

- (1) The person to whom the fee was paid;
- (2) The position of the person to whom the fee was paid;
- (3) The amount of the fee;
- (4) The date the services were rendered; and
- (5) A general description of the services rendered.

(b) The disclosure shall be on a form designed by the registry of election finance, shall be made under oath, and shall contain a statement that a false statement on the report is subject to the penalties of perjury. A disclosure form shall be filed within five (5) days of entering into any contract for consulting services. Such form shall be updated quarterly. The dates for filing the quarterly reports shall be determined by the registry of election finance.

(c) All disclosures made to the registry pursuant to this section are public records and open for inspection during regular business hours.

(d)

(1) It is a Class C misdemeanor for any person or entity to knowingly fail to file a disclosure form as required by this section.

(2) It is a Class C misdemeanor for any person or entity to file a disclosure form required by this section more than thirty (30) days after the date on which the report is due.

Section 2-10-126.

(a) Any person listed in § 2-10-125(a)(1) through (4) who contracts to receive a fee, commission or any other form of compensation for consulting services from a person or entity other than the state, a county or municipality, shall be required to make the same disclosure required by § 2-10-125. The registry of election finance may devise a new form for disclosure of consulting fees or may modify the one required by § 2-10-125 for use by all parties required to disclose.

(b) All disclosures made to the registry pursuant to this section are public records and open for inspection during regular business hours.

(c) The disclosure shall be on a form designed by the registry of election finance, shall be made under oath, and shall contain a statement that a false statement on the report is subject to the penalties of perjury. A disclosure form shall be filed within five (5) days of entering any contract for consulting services. Such form shall be updated quarterly. The dates for filing the quarterly reports shall be determined by the registry of election finance.

(e)

(1) It is a Class C misdemeanor for any person or entity to knowingly fail to file a disclosure form required by this section.

(2) It is a Class C misdemeanor for any person or entity to file a disclosure form required by this section more than thirty (30) days after the date on which the report is due.

Section 2-10-127.

(a) Any person subject to the prohibition in §2-10-123(a), whose sibling, spouse or child is required to register as a lobbyist under §3-6-104, shall report in writing, on a form developed by the registry of election finance:

- (1) The name of the person making the disclosure and such person's business address;
- (2) The name and business address of the sibling, spouse or child;
- (3) The position of the sibling, spouse or child; and

(4) The name and address of each person for whom the sibling, spouse or child registers for the purpose of lobbying.

(b) The report shall be filed with the registry annually no later than February 1.

(c) Each person subject to the prohibition in §2-10-123(a) shall file a supplementary report with the registry of election finance which includes a complete description of any information which has changed from the information supplied in the last registration form or last report. Such supplementary reports shall be filed within ten (10) days of any such change.

(d) A person subject to the prohibition in §2-10-123(a) shall declare before taking a legislative or administrative action on any matter which is lobbied by a sibling, spouse or child of such person, "It may be considered that I have a degree of personal interest in the subject matter of this bill or action, but I declare that my argument and my ultimate vote answer only to my conscience and to my obligation to my constituents and the citizens of the State of Tennessee." The person may alternatively state that such person is declaring a potential conflict of interest in accordance with the provisions of this section.

(e) The report shall be made under oath and shall contain a statement that a false statement on the report is subject to the penalties of perjury.

(f) All disclosures made to the registry pursuant to this section are public records and open for inspection during regular business hours.

(g) Failure to file a report required by the provisions of this section is a Class C misdemeanor.

Section 2-10-128.

(a) Any member of the general assembly shall report annually in writing to the registry of election finance prior to February 1:

(1) The major source or sources of private income of more than two hundred dollars (\$200), including, but not limited to, offices, directorships, and salaried employments of the person making disclosure, or a spouse residing with such person, but no dollar amounts need be stated. The disclosure shall state the name and address of any entity which provides a source of private income of more than two hundred dollars (\$200). This subdivision (1) shall not be construed to require the disclosure of any client list or customer list, nor the address of any investment property;

(2) Any positions held during the applicable reporting period, including, but not limited to, those of an officer, director, trustee, general partner, proprietor, or representative of any corporation, firm, partnership, or other business enterprise, or any non-profit organization or educational institution. Both the year and month must be reported for the period of time the position was held. Positions with the federal government, religious, social, fraternal, or political entities, and those solely of an honorary nature do not require disclosure.

(b) The reports in subsection (a) shall be posted on the web site of the registry of election finance. The registry of election finance shall modify existing forms to accomplish the purposes of this act.

(c) The report provided in this section shall be in addition to any disclosure required to be filed under Title 8, Chapter 50, Part 5.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. The provisions of this act shall take effect July 1, 2005, the public welfare requiring it.

PASSED: April 25, 2005



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 4th day of May 2005



PHIL BREDESEN, GOVERNOR